



UNITED STATES PATENT AND TRADEMARK OFFICE

CH
UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/511,549	10/18/2004	Takahide Ohishi	Q102803	9316
23373	7590	01/30/2008	EXAMINER	
SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037			HOBBS, LISA JOE	
		ART UNIT		PAPER NUMBER
		1657		
		MAIL DATE	DELIVERY MODE	
		01/30/2008	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)
	10/511,549	OHISHI ET AL.
	Examiner	Art Unit
	Lisa J. Hobbs	1657

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 02 January 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) The period for reply expires ____ months from the mailing date of the final rejection.
 b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. The Notice of Appeal was filed on ____ A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) They raise the issue of new matter (see NOTE below);
 (c) They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: ____ (See 37 CFR 1.116 and 41.33(a)).

4. The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. Applicant's reply has overcome the following rejection(s): ____

6. Newly proposed or amended claim(s) ____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. For purposes of appeal, the proposed amendment(s): a) will not be entered, or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: ____

Claim(s) objected to: ____

Claim(s) rejected: 7, 13, 15 and 17.

Claim(s) withdrawn from consideration: 8-10.

AFFIDAVIT OR OTHER EVIDENCE

8. The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See continuation sheet..

12. Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). 01/02/08

13. Other: ____

/Lisa J. Hobbs/
 Primary Examiner
 Art Unit: 1657

Continuation of #11. The amendment to claim 7 does not overcome the rejection made under 37 CFR 102(e). SEQ ID NO: 8 of Chen et al. is identical to the instant SEQ ID NO: 2 ; the examiner is interpreting a claim for 95% "homology" as 95% "identical" since the word "homology" connotes an evolutionary relationship, sometimes an unclearly defined relationship, and not a specific relationship between known SEQ ID NOs. As stated in the final rejection, the steps of the instant method are anticipated by the method steps recited by Chen et al. in claims 1-11. Applicants argue that Chen et al. merely disclose that RUP3 plays a role in insulin "regulation" , but do not disclose that RUP3 promotes insulin production or increases insulin content. However, "regulation" could be either increasing or decreasing the amount of the compound of interest; thus "regulation" clearly encompasses increasing insulin. Applicants also argue that the date on the Chen et al. disclosure does not antedate the instant disclosure since the claims precisely stating method steps were added by preliminary amendment. However, the filing date of the Chen et al. application, which has been accorded the provisional filing date, is prior to the earliest filing date of the instant application and the Chen et al. provisional application states (at pages 14 and 19, for example) that the RUP3 protein can be used to screen candidate compounds and provide for the direct identification of candidate compounds, agonists, inverse agonists, and partial agonists, which act at this cell surface protein.